



**41 CFR Parts 301-10, 301-70**

**[FTR Case 2022-01; Docket Number GSA-FTR-2022-0010, Sequence 2]**

**RIN 3090-AK61**

**Federal Travel Regulation (FTR); Constructive Cost**

**AGENCY:** Office of Government-wide Policy (OGP), General Services Administration

**ACTION:** Final rule.

**SUMMARY:** GSA is issuing a final rule amending the Federal Travel Regulation (FTR) to clarify the calculation of “constructive cost” as it relates to temporary duty (TDY) travel. GSA is also making technical changes regarding what method of transportation agencies should compare privately owned vehicle costs to when preparing a constructive cost analysis. These clarifications are intended to produce better estimates for agency decision makers.

**DATES:** Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*.]**

**FOR FURTHER INFORMATION CONTACT:** Ms. Jill Denning, Office of Government-wide Policy, at 202-208-7642 or e-mail at [travelpolicy@gsa.gov](mailto:travelpolicy@gsa.gov) for clarification of content. For information pertaining to status or publication schedules, contact The Regulatory Secretariat (M1V1CB), at 1800 F Street N.W., Washington, DC 20405, 202-501-4755 or e-mail at [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite FTR case 2022-01.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

GSA published a proposed rule at 87 FR 32106 on May 27, 2022, to clarify the calculation of "constructive cost" as it relates to temporary duty (TDY) travel. This rule finalizes the proposed changes to section 301-10.309, regarding what method of transportation agencies should compare privately owned vehicle (POV) costs to when preparing a constructive cost analysis, and makes minor editorial adjustments in order to clarify intent.

When employees perform official business away from their official station, agencies must, in authorizing the TDY travel, select the transportation method most advantageous to the Government, when cost and other factors are considered. Travel must be by the most expeditious means of transportation practicable and commensurate with the nature and purpose of the duties. In addition, the agency must consider energy conservation, total cost to the Government (including costs of per diem, overtime, lost work time, and actual transportation cost), total distance traveled, number of points visited, and number of travelers. The most advantageous transportation method by order of precedence is common carrier, Government-furnished automobile, rental car, and POV.

Regardless of the method of transportation the agency selects in the travel authorization, Federal employees may

choose to use a POV while on TDY. However, if the agency has selected a method of transportation other than POV for the employee's use because it is more advantageous to the Government, the agency must perform a cost comparison, known as "constructive cost", to determine how much the agency should reimburse the traveler when the traveler chooses a POV over the agency-selected method of transportation. If the constructive cost of the agency-selected method of transportation is less than the cost of traveling by POV, the employee only receives that limited amount, regardless of how much it costs to use a POV. If the constructive cost shows that the POV cost is less than the agency-selected method, then the employee will receive the total POV-related costs (as listed in 41 CFR 301-10.304). (Agencies are reminded that the FTR does not authorize agencies to require that employees use their POV for TDY travel, even if the costs will be less for the Government.)

GSA is aware that agencies may mistakenly calculate TDY constructive costs by only comparing the selected transportation method with the POV mileage rates without also factoring in related travel costs, such as per diem expenses, parking, baggage fees, etc. Not factoring in these other costs leads to an incomplete calculation of the total constructive travel cost that employees may incur.

The Civilian Board of Contract Appeals (CBCA) and its predecessor, the General Services Board of Contract Appeals (GSCBA) have, in their decisions on TDY constructive costs, opined that when comparing the total allowable costs for travel by a method other than that most advantageous to the Government, with the constructive cost of traveling by the agency-selected method, agencies should think through the complete travel experience and include other potential costs. (*See In the Matter of Russell E. Yates*, GSBCA No. 15109-TRAV (Jan. 28, 2000); *In the Matter of Stephen M. England*, CBCA 3903-TRAV (Jan. 30, 2015)). For example, if the agency selected travel by air via common carrier but the employee chose to travel by POV, in calculating the constructive cost of air travel the agency should include potential costs such as the expected cost of lodging as well as meals, incidental expenses, airfare, baggage, use of a rental car, and transportation to and from the airport using a taxi or transportation network company (TNC), and perhaps others depending on the individual situation. Even though these costs may not actually be incurred when the employee uses the POV instead of flying via a common carrier, the relevant travel costs should be included in the agency's constructive cost analysis to determine how much the agency-selected method would have cost the agency in total.

Additionally, GSA is clarifying the constructive cost methodology stated in §301-10.309. GSA amended this section in 2015 to include the use of rental cars as a potential transportation option, in addition to the use of common carriers (80 FR 27259). However, when determining the constructive cost, the section currently states that agencies should not exceed the total constructive cost of the "authorized method of common carrier transportation," when it should read "authorized method of transportation" as is consistent with 41 CFR 301-70.105(a).

## **II. Discussion of the Final Rule**

GSA did not receive any public comments related to the proposed rule and has not made any substantive changes to the regulatory language from the proposed to final rule.

While difficult to quantify, GSA expects some savings in travel costs as a result of this final rule; GSA anticipates that no additional travel costs will result from agencies performing more comprehensive constructive cost comparisons as agencies will better understand the impact of method of transportation decisions, and therefore should be better positioned to select the method of transportation most advantageous to the Government. Agencies also should be able to better limit TDY costs incurred by employees who choose to use their POV instead of the agency-selected transportation method. Common carrier, Government-furnished automobile, and rental car

are presumed to be the most advantageous methods of transportation, and are often less expensive than travel by POV. Administrative savings from having a more comprehensive process should also lessen the time agencies and employees spend working through confusion or differences in interpretation, hopefully with fewer employees requesting CBCA review of claims for entitlement to travel expenses.

### **III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action, and therefore, is not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

### **IV. Congressional Review Act**

OIRA has determined that this rule is not a "major rule" as defined by 5 U.S.C. 804(2). Additionally, this rule is excepted from Congressional Review Act reporting

requirements prescribed under 5 U.S.C. 801 since it relates to agency management or personnel under 5 U.S.C. 804(3)(b).

#### **V. Regulatory Flexibility Act**

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the changes are administrative in nature and only affect Government employees. Therefore, a Final Regulatory Flexibility Analysis has not been performed.

#### **VI. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the Federal Travel Regulation do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

#### **List of Subjects**

##### **41 CFR Parts 301-10, 301-70**

Government employees, Travel and transportation expenses, common carriers.

Robin Carnahan  
Administrator of General Services.

For the reasons set forth in the preamble GSA amends  
41 CFR parts 301-10 and 301-70 as set forth below:

**PART 301-10-TRANSPORTATION EXPENSES**

1. The authority citation for 41 CFR part 301-10  
continues to read as follows:

**Authority:** 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C.  
40118; Office of Management and Budget Circular No. A-126,  
"Improving the Management and Use of Government Aircraft."  
Revised May 22, 1992.

2. Revise §301-10.309 to read as follows:

**§301-10.309 What will I be reimbursed if I am  
authorized to use common carrier transportation or a rental  
vehicle and I use a POV instead?**

You will be reimbursed the applicable POV rate on a  
mileage basis, plus per diem and related travel expenses,  
not to exceed the total constructive cost of the authorized  
method of transportation. Your agency must determine the  
constructive cost in accordance with §301-70.105(a).

**PART 301-70-INTERNAL POLICY AND PROCEDURE REQUIREMENTS**

3. The authority citation for 41 CFR part 301-70 is  
revised to read as follows:

**Authority:** 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2, Pub. L.  
105-264, 112 Stat. 2350 (5 U.S.C. 5701, note); OMB Circular  
No. A-126, revised May 22, 1992; OMB Circular A-123,  
Appendix B, revised August 27, 2019.



4. Amend §301-70.105 by revising paragraph (a) to read as follows:

**§301-70.105 May we prohibit an employee from using a POV on official travel?**

\* \* \* \* \*

(a) Limit reimbursement to the constructive cost of the authorized method of transportation, which is the sum of travel and transportation expenses the employee would reasonably have incurred had the employee traveled by the method of transportation deemed to be most advantageous to the Government. The calculation will necessarily involve assumptions. Examples of related expenses that could be considered constructive costs include, but are not limited to, taxi and TNC fares, baggage fees, rental car costs, tolls, ferry fees, and parking charges; and

\* \* \* \* \*

5. Amend §301-70.506 by revising paragraph (b) to read as follows:

**§301-70.506 How do we define actual cost and constructive cost when an employee interrupts a travel assignment because of an incapacitating illness or injury?**

\* \* \* \* \*

(b) Constructive cost is the sum of travel and transportation expenses the employee would reasonably have incurred for round-trip travel between the official station and the alternate location plus per diem calculated for the

appropriate en route travel time. The calculation will necessarily involve assumptions. Examples of related expenses that could be considered constructive costs include, but are not limited to, taxi and TNC fares, baggage fees, rental car costs, tolls, ferry fees, and parking charges.

[FR Doc. 2023-00733 Filed: 1/17/2023 8:45 am; Publication Date: 1/18/2023]